IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 698 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKHBHAI MOTIBHAI MAHIDA

Versus

SENAPATI STATE RESERVE POLICE FORCE

Appearance:

1. Special Civil Application No. 698 of 1991

MR YN OZA for Petitioner No. 1

MR LP PUJARI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/04/2002

ORAL JUDGEMENT

1. The petitioner has approached this Court under Article 226 of the Constitution of India seeking relief to the effect that writ of mandamus be issued against the

respondents directing them to appoint the petitioner on the post of Armed Police Constable pursuant to the selection of the petitioner as per order dated 24/8/1987. The petitioner has further prayed the communications dated 9/8/1989 and 29/9/1989, whereby the petitioner has been informed that he cannot be appointed on the same post in view of the ban imposed by the Government on fresh appointments, be quashed and set aside.

2. According to the petitioner pursuant to his application made for the appointment made for the appointment as Armed Police Constable, he was called for interview vide letter dated 10/8/1987 by respondent no. 1. After undergoing the entire process of interview and the test, he was found to be suitable candidate for the appointment on the same post. He was informed vide letter dated 24/8/1987 that he should remain present on 29/8/1987 with necessary certificates with regard to the educational qualification and also with a bond of Rs.1692/- together with other requisite certificates and photograph. According to the petitioner, in the said letter it was specifically mentioned that he had been selected for that post. Accordingly on 29/8/1987 the petitioner remained present before the concerned authorities alongwith all the necessary documents and the photograph. His grievance is that inspite of fact that intimation with regard to his selection was already made and in pursuance thereof he was also called by the authorities on 29/8/1987, no appointment was given to him and the petitioner was subsequently informed that he could not be appointed on the post of Armed Police Constable as the Government by passing resolution had put ban on fresh recruitments. In view of the subsequent development, the petitioner made several representations to the concerned authority and as he did not find any favourable reply, he ultimately thought it fit to approach this Court by way of this petition.

3. Mr. Shivang Shukla, learned advocate for the petitioner has submitted that the decision of the respondents is required to be quashed and set aside because it is high handed, arbitrary and smacks of hostile discrimination and hence it is violative of Article 14 of the Constitution of India. He has further submitted that despite the fact that ban was imposed in the whole State, many appointments were made in the Police Department at different places and the petitioner and his co-candidates were wrongfully denied the opportunity of being appointed. He has lastly submitted that the respondents after having prepared the select list ought to have acted upon it and their decision to

cancel the same is high handed and arbitrary.

3.1. Mr. L.R. Pujari, Ld. AGP for the respondents has submitted that after necessary formalities were completed including medical examination of the petitioner, his name was placed on the select list. However, no appointment could be given either to the petitioner or any other selected candidate because of the ban imposed by the Government restraining the authorities from making fresh recruitment till 31/8/1988. He has further submitted that in view of the ban imposed by the Government, the Director General of Police vide his letter dated 31/12/1988 issued directions to all the Groups of State Reserve Police Force not to fill up the vacancies at that stage. He has further submitted that in view of resolution passed by the Government of Gujarat dated 5/6/1982 the name of the petitioner and other selected candidates were put on waiting list for one year and thus the petitioner's name was deleted from the select list and it was put on the waiting list. This fact was intimated to the petitioner and he had made representation which was duly replied vide office letter dated 29/9/1989. He has further submitted that in August 1989 the select list was cancelled due to efflux of time and in view thereof the petitioner cannot claim any right to have appointment on the post of Armed Police Constable.

4. It is true that from the record of this petition, it clearly appears that the petitioner had succeeded in the interview and he was on the verge of being appointed to the post of Armed Police Constable. However, in view of the ban imposed by the Government of Gujarat against fresh recruitment, he could not be given the appointment letter. It also appears that in view of the imposition of ban by the Government, the Director General of Police had circulated directions to all the offices of the State Reserve Police Force in the State not to make any fresh appointment on the post of Armed Police Constable. In view of this unfortunate development the petitioner's name came to be placed on the waiting list which also expired by efflux of time. It is a well settled principle of law that a person cannot claim a right to be appointed on the post by virtue of his name being there either in the select list or in the waiting list after the expiry of the same. In similar circumstances a petition came to be filed before this Court being Special Civil Application No. 1623 of 1989, which was rejected by this Court (Coram : G.T. Nanavati, J. as he then was) by observing as under :-

"As the life of the list which was prepared earlier was one year, the petitioner cannot claim any right of appointment on the basis of the said list. This petition is, therefore, rejected."

5. In view of this, despite the unfortunate circumstances, I am not able to accept the contentions raised by Mr. Shukla. With the result, this petition deserves to be dismissed as it does not have any merit. Before parting with this judgment, I may observe that though the petitioner was given a chance to make representation on earlier occasion, it is not known whether he had made any such representation at that time. In the circumstances, he is again given liberty to make appropriate representation within a period of one month from the date of receipt of writ of this Court and as and when it is made, the respondents may consider it on its merits. In the result, this petition is dismissed. Rule discharged.

[AKSHAY H. MEHTA, J.]

* Pansala.